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The European Commission proposal for a Council Directive on a Common Corporate Tax Base (CCTB), COM (2016) 685 final

Due to the complex and comprehensive nature of the Directive, the tight timeframe provided for comments does not warrant a thorough and in-depth analysis of the many provisions included in the Directive. The Confederation of Swedish Enterprise will therefore, at this stage, concentrate on providing general views on the proposal and also briefly touch upon a few specific areas. However, on February 29 this year, Näringslivets skattedelegation submitted comments to the Ministry of Finance on the anti-abuse provisions in the ATAD Directive. The Confederation of Swedish Enterprise finds many of these comments to be valid also in relation to the equivalent provisions in the CCTB Directive.

Opinion

The Confederation of Swedish Enterprise is deeply concerned about the fact that the original CCCTB proposal has been split into a two-staged approach. A system with a common corporate tax base without consolidation would be of little or no interest for businesses. Once again, the Commission is pushing for a quick process on issues that will have huge impact for businesses as well as Member States. We find it very disturbing being asked to discuss and

comment on details in a common tax base when the focus should be a discussion on the overall package as such, i.e. including consolidation.

In order to remove cross border tax obstacles, intra-group transactions need to be disregarded for tax purposes. A common, but not consolidated, corporate tax base would, irrespective of the proposed loss relief re-capture mechanism, suffer from the same transfer pricing problems in the EU as exist today. It would also not lead to the true administrative simplification that is achieved with consolidation.

A major concern for the Confederation of Swedish Enterprise is that Member States will not commit to consolidation, i.e. the second stage of the process proposed by the Commission. In addition, we believe that even the limited loss-offset envisaged during the first phase, may be met by considerable opposition and time delay from Member States.

We are skeptical towards making the system mandatory for MNEs. Optionality is key to ensure a competitive system. By making the system optional, it would be subjected to a “market test”, which would ensure the system’s competitiveness in an international context. Without it, we are concerned that the CCCTB may not evolve sufficiently over time to be competitive compared to tax systems in other important economic areas.

The Confederation of Swedish Enterprise is of the opinion that consolidation should be allowed from the start. If not, any decision on CCTB needs to be an integral part of a consolidated system, committed to by Member States from the outset. Without such an explicit commitment by Member States, the Confederation of Swedish Enterprise urges the Swedish government to oppose the proposal on CCTB and instead focus on reaching agreement on the proposal for a Directive on Double Taxation Dispute Resolution Mechanisms in the European Union.

Background

On October 25, 2016, the European Commission presented a proposal for a Directive on a Common Corporate Tax Base (CCTB). The proposal is the first in a two stage re-launch of the 2011 proposal for a Common Consolidated Corporate Tax Base (CCCTB). The second stage, where consolidation is added, is presented in a separate Directive.

General comments

The Confederation of Swedish Enterprise believes it is paramount that the corporate tax system in Europe is conducive to investment, growth and job creation. Tax obstacles to cross-border investments must be removed and the administrative burden of complying with tax rules must be substantially reduced. A level-playing field is required to ensure European competitiveness.

The European Commission has made the fight against tax evasion, tax avoidance and aggressive tax planning a key priority and has pushed a very active agenda in this area. The Confederation of Swedish Enterprise supports these efforts but believes that such rules must be introduced and applied in a uniform and consistent manner in all Member States. Furthermore, the rules must be compatible with rules applied in other important economic areas such as the US and Japan.

The Confederation of Swedish Enterprise welcomes the renewed emphasis to reduce double taxation in the EU and the efforts to ensure that tax systems are also efficient, so that they can support a stronger and more competitive economy. We concur with the EU-Commission that this should be done by creating a more favorable tax environment for businesses that reduces compliance costs and administrative burdens, and ensure tax certainty. In particular, the importance of tax certainty in promoting investment and stimulating growth has been recently recognized by G20 leaders and has become the new global focus in the taxation area.

Fighting against tax avoidance and aggressive tax planning, both at EU and global level, must therefore go hand in hand with creating a competitive tax environment for businesses. They are the two sides of the same coin.

The Confederation of Swedish Enterprise has previously stated its support for the European Commission to address cross-border obstacles in the corporate tax field. The lack of cross-border profit and loss relief and the large number of transfer pricing disputes within the EU frequently result in international double taxation, thus constituting significant barriers to the Single Market.

Although the CCCTB could provide a solution to these problems, it needs to entail certain elements. The Confederation of Swedish Enterprise has previously stated that in order for the CCCTB to be able to tackle these problems and to attract the interest and support from the business

community, the CCCTB should meet at least the following four key conditions:

- 1. The CCCTB needs to be optional for companies*
- 2. The system needs to allow for the consolidation of profits and losses from the outset (one-step process)*
- 3. The CCCTB needs to reduce compliance costs with a "one stop-shop" mechanism*
- 4. The system must leave any decision on tax rates to national governments*

The renewed proposal for a CCCTB is presented as both an anti-avoidance measure and as an economic efficiency enhancing measure. Additional anti-abuse measures, such as exit and hybrid provisions have been added since the 2011 CCCTB proposal. A CCCTB would, properly implemented, considerably improve the functioning of the Single Market from a tax perspective. Cross-border companies would benefit from a single set of rules to calculate their taxable profits in the EU, rather than a medley of different national systems. They would be able to file a single tax return for all their EU activities through a "One-Stop-Shop" system, dealing with just one Member State rather than multiple tax authorities. Consolidation will also mean that losses in one Member State can automatically be set off against profits in another, thereby allowing cross-border companies to enjoy the same treatment as purely domestic ones. Transfer pricing concerns would be eliminated in the CCCTB-area.

The Confederation of Swedish Enterprise is however concerned that Member States, after having agreed on a CCTB, will not commit to consolidation. The question of consolidation has been under attack from Member States since the CCCTB proposal was presented in 2011. As of yet, no indication or convincing arguments have been presented as to why Member States would be willing to change their position on this issue after having agreed on a CCTB. Even the limited loss-offset envisaged during the first phase, may be met by considerable opposition from Member States.

The Confederation of Swedish Enterprise would also like to reiterate the importance of not making the CCCTB compulsory for any company. As much as we appreciate optionality for SMEs, we believe that it should be optional for MNEs as well. The purpose of a CCCTB is to provide for a competitive tax system which boosts business activity, job creation and strengthens the European economy. In our view, it is also desirable for governments to make the CCCTB optional since it would ensure a gradual impact on revenues.

In addition, regardless of how competitive a new system may be, any shift from a domestic tax system to a common system within the EU will present significant costs. These costs may occasionally outweigh the benefits of a new system. A compulsory shift could therefore prove to be contradictory in terms of economic growth and competitiveness.

Last but not least, optionality is key to ensure a competitive system. Without it, the CCCTB may not evolve sufficiently over time to be competitive compared to tax systems in competing economic areas.

The CCCTB, as presented in 2011, was by no means without flaws. The proposed allocation formula, for one, was not optimal for smaller Member States with small domestic markets. Having the sales factor included in the allocation key, and at an equal importance as the production factors labor and capital, could result in considerable revenue losses for smaller countries. In addition, intangibles were left out of the formula.

However, carefully drafted and seen as a package, the pros of having consolidation, could for many companies potentially reconcile the cons of having to trade competitive domestic tax rules in favor of less competitive rules under a common corporate tax base. Leaving consolidation behind however, would result in transfer pricing concerns mainly remaining and true administrative simplification not being achieved.

Furthermore, having a common set of rules under a corporate tax base does not necessarily mean that the rules will be interpreted in a consistent way by Member States. Consequently, a system with a common corporate tax base with an increased number of anti-abuse measures and without consolidation would be of little or no interest for businesses.

Specific comments

The Swedish Group Contribution Rules

Several Member States, including Sweden and other small economies, use a group contribution system (koncernbidrag) instead of group consolidation.

The need to keep national consolidation rules is not explicitly spelled out and addressed in the proposal. Consolidation is introduced only in the second stage. Meanwhile, how will the Directive on CCTB affect the Swedish Group Contribution rules? Clarity on this issue is of utmost importance to Swedish businesses, especially since it seems very unlikely that there will be a second

stage. Under any circumstances there will be a time-gap between CCTB and CCCTB. It should not be left to the courts to interpret the scope of the Directive.

Naturally, the same argument is valid for other rules that are directly connected with the Group Contribution rules, e.g. the ones in Chapter 23 of the Inkomstskattelagen (IL).

Interest Deductibility

The proposal leaves “borrowing costs” to be defined by national law. As a result, businesses could potentially face 28 definitions of what is to be considered “borrowing costs”. This seems difficult to reconcile with a Common Corporate Tax Base.

Allowance for Growth and Innovation (AGI)

The proposed measure to address the debt/equity issue raises concerns since it is likely to lead to distortive effects. By adding a reduction or adding a factor for the decline in equity capital to taxable income, a cyclical element to corporate taxation is introduced. This is unwarranted. During a recession, equity capital may very well be reduced and it does not give rise to an increase in the ability to pay taxes.

Depreciation

The Confederation of Swedish Enterprise would like to emphasize the need to keep depreciation rules simple and competitive. The number of depreciation classes should be kept to a minimum and given the rapid transformation of assets, businesses and trade, a shorter economic life-span is called for than presently envisaged by allowing a depreciation rate of 25% declining balance.

Switch-over clause

The proposed clause will impact legitimate business structures where the country of investment may have determined, for legitimate national policy reasons, to apply a low corporate income tax rate in order to encourage investment and attract business operations. Investments in genuine

economic activities should not be considered tax avoidance simply because they are located in low tax jurisdiction.

Furthermore, it is also likely that the proposed switch-over clause will disproportionately affect investment in developing countries, which often use competitive corporate tax rates or tax-reducing incentives to attract foreign investment.

A Switch-over clause was included in the original ATAD proposal presented by the Commission earlier this year. However, after receiving heavy criticism the provision was withdrawn from the Directive. It should not be included in the CCTB proposal.

Tax rates

Since the tax base differ from the present tax base in each Member State, a corporate tax rate for CCTB is called for. This tax rate may have an impact on the tax rate once consolidation is introduced. Sweden is likely to lose tax revenues since in the CCCTB, sales is included in the allocation formula and intangibles left out. This fact must not be allowed to exert an upward pressure on the corporate tax rate in Sweden for CCTB or the CCCTB.

THE CONFEDERATION OF SWEDISH ENTERPRISE



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